

. . . the Plan, and his Annuity Commencement Date is on or after the date Occidental receives the information required to purchase the annuity, the single premium for the annuity shall be determined under Section 8 by his age nearest birthday on the Annuity Commencement Date. Otherwise, the single premium shall be determined by his age nearest birthday on the first day of the month in which Occidental receives the information.

3.4 If a Participant for whom an annuity is purchased under the Contract is entitled to an immediate retirement annuity under the Plan, and his Annuity Commencement Date is a month or more before Occidental receives the information required to purchase the annuity, Occidental shall withdraw from the Deposit Fund an amount in addition to that required to purchase the annuity. The additional amount shall be the sum of the annuity payments due the Participant under the Plan, before the purchase of the annuity, as reported to Occidental by the Contractholder. Occidental shall pay the additional amount to the Participant when the first annuity payment is made to him.

3.5 Occidental shall withdraw from the Deposit Fund an expense charge for any payments or withdrawals made from the Deposit Fund other than to purchase an annuity for a Participant on a fully-guaranteed basis, to provide benefits under Section 3.4, to pay premium or other similar taxes under Section 3.6 or to pay any amount under Section 3.8. The charge shall be 2% of each payment and shall belong to Occidental.

* * * * *

3.7 If the conditions of the contract are met, or if Discontinuance of the Contract occurs after the conditions of the Contract have been met for the first twenty-five Contract Years, Occidental agrees to provide and guarantee all benefits which shall become payable under the Plan with respect to those Participants who are listed in the Schedule of Participants attached to the Contract as Exhibit B. For the purposes of this Section 3.7, and notwithstanding anything contained in the Contract to

the contrary, the Contractholder and Occidental agree that the information and data contained in Exhibit B, as such Exhibit appears at the Contract Date, shall be binding and conclusive. Except as specified in this section 3.7, Occidental shall not be responsible for the sufficiency of the Deposit Fund to provide the benefits specified in the Plan. Occidental shall have no liability except as provided in the Contract.

The Contractholder and Occidental agree to modify or amend the Plan or the Contract appropriately, if such action becomes necessary because any Federal or State law or regulation which becomes effective after the Contract Date, and which imposes any condition, restriction, limitation or requirement on the operation of either the Plan or the Contract or both which, as determined by Mutual Agreement, would be such as to prevent Occidental from continuing its agreement under this Section.

Withdrawals for Purposes as Specified

3.8 If (1) the Contractholder approves the payment of any amounts payable as described in the Schedule of Administration and Professional Fees which is attached to the Contract, as Exhibit A and directs Occidental to make such payment from the Deposit Fund; or (2) the Contractholder is required to make payment of any amount in connection with any taxes, interest, expenses or other debts or obligations arising with respect to the Plan, Occidental, upon receipt from the Contractholder of such approval and direction and such other information as Occidental may need to make such payment, shall withdraw from the Deposit Fund the amount necessary to make such payment, and shall make such payment to such payee as the Contractholder shall direct.

However, no such withdrawal and no such payment shall be made if, in Occidental's opinion, the withdrawal from the Deposit Fund and the payment of any amount which Occidental is directed to make under this Section would be dishonest or not bona fide, and would materially affect the actuarial capacity of

EXHIBIT B

SCHEDULE OF PARTICIPANTS IN THE TEAMSTERS LOCAL 688
EMPLOYEES PENSION PLAN (PLAN "B")

(As referred to in Section 3.7)

NAME	SERVICE DATE	DATE OF BIRTH	SPOUSE'S NAME	DATE OF SPOUSE'S BIRTH
Paul Akers	11-1-64	5-27-27	Louise	6-19-31
Mary Aulbach	9-6-67	1-27-32	Kenneth	9-28-28
Dona Buisse	12-1-70	10-14-45		
Dolores Baker	11-18-68	7-3-28		
Frank Boykin	10-6-69	7-5-38	Marie	1-2-40
Claude Brown	12-19-69	5-7-37	Juanita	9-3-39
Charles Bryson	5-1-69	5-3-30	Doris	7-31-32
Frank Caminiti	10-20-69	3-21-38	Mary	12-7-38
Kenneth Carroll	11-1-68	1-28-34	June	6-10-33
William Chrostowski	6-1-65	11-9-16	Evelyn	10-15-19
John Cooney	3-27-67	6-23-36	Patricia	9-4-38
Helen Crow	1-24-55	9-20-28	Ronald	8-2-29
Nancy Davis	1-1-44	3-22-22	Roy	3-9-27
Walter Deans	4-22-66	4-13-07	Patricia	2-9-21
Veronica Dickhaus	11-1-70	12-1-14	Richard	2-26-19
Joe Dino	11-1-70	11-14-26	Eula	9-6-25
Mike Dunn	1-1-64	11-27-27	Marilyn	9-15-36
Joseph Galli	7-1-67	10-8-29	Jessie	9-5-31
Shirley Gantner	3-10-69	9-30-38	Robert F.	3-16-42
Harold J. Gibbons	7-1-38	4-10-10	Ann	11-21-18
Phillip Goodvilling	11-13-61	2-11-35	Arlene	3-11-38
Leroy Graham	1-16-69	12-12-27	Jean	2-25-33
Nancy Humphrey	9-14-70	4-21-47		
Robert Jackson	1-1-60	1-31-33		
Richard Kavner	11-1-39	11-16-12	Roslyn	8-23-23
Arthur Klein	1-1-64	8-25-26	Roberta	1-25-26
Linda Kraus	6-8-70	2-26-50		
Elmer Kroeter	11-1-70	7-18-12	Josephine	1-30-10
Joyce Lang	5-25-67	10-22-42		
Janet Lewis	6-15-59	10-21-37		
Terrence McCormack	7-9-67	11-14-23	Enid	4-17-24
Caronnie Medley	9-14-70	1-1-43	Edward	1-20-37
Joan Naber	6-5-51	3-2-14	Marie	7-30-15
Ernest Heidel	10-6-52	3-30-19	Lillian	6-22-18
James Pace, Jr.	1-9-67	12-25-30	Evelyn	7-20-30
Billy Rossell	10-16-67	7-20-39		
J. Michael Ryan	10-23-67	9-12-43	Susan	12-8-45
Charles Saffo	8-3-52	4-21-05	Rosalie	9-21-15
Otto Sanders	11-1-64	10-28-29	Therese	11-17-29
Levi Sandford	3-1-65	6-1-30	Tallulah	9-8-31
Caroline Shannon	5-5-69	12-18-24		
Lizzi Smith	5-29-61	5-8-18	Eunice	11-4-15
Viacci Venegoni	11-1-70	6-24-11	Mary L.	12-17-18
Geraldine Hallenberg	4-15-68	7-10-21		
Marylee Kild	8-1-63	6-21-31	Hadley	2-1-32
Roger Witby	1-2-70	2-24-31	Elvira	12-18-33
Conn Wright	1-5-70	1-2-43	Mary Ellen	1-11-42

The Court: All right, go ahead.

Q. (By Mr. Rosecan) Now, in your negotiations with Occidental, you've started from a point with respect to LHI where they were part of a plan back in 1968 that was self-administered by you trustees? A. Right.

Q. Where for certain payments by LHI their employees would get certain pension benefits upon retirement, is that correct? A. Correct.

Q. And so when you recommended your negotiations with Occidental was it understood that the LHI contribution and payments were to stay the same? A. Correct.

Q. Now, I'm going to use two words and ask you if in your negotiations with Occidental either of these two words were ever used or explained to you. One word is "pooling" and the other word is "segregating." A. Never.

Q. When you were negotiating with Occidental did you have, or was it explained to you, the accounting method that Occidental would use either to pool the contributions of 688 and of LHI or to segregate those contributions? [103] A. No, sir.

Q. At that time did you know what pooling would mean? A. No, sir, not at that time, no, sir.

Q. Did you also understand that actuarial figures were needed to supply to IRS to obtain approval of the plan by way of its exempt status? A. Yes, sir, I did.

Q. Who supplied the figures that were in turn given to IRS? A. The original figures that were given to me by Mr. Goodwilling, which I turned over to Occidental. Now, who supplied those figures to IRS, I don't know.

Q. The figures that would be supplied to IRS would be the amount of the contributions, the amount of the fund and any pay-outs, is that true? A. That's correct.

Q. Where did these figures come from? A. Occidental.

[653] Mr. Kimbrell: Your Honor, it is my understanding that all defendants are willing to agree to the following stipulation: It is hereby stipulated between the parties that if called, Stanley Rosenblum would testify as follows: With regard to the authorship of the first paragraph of the Section 3.7 of the contract, the first draft of the contract was drawn by Occidental and transmitted to Mr. Rosenblum. Mr. Rosenblum made a note that this draft contained, "No guarantee provision" and discussed this at a meeting with Occidental.

Thereafter, Occidental submitted a draft which contained the following language: "If the conditions of the contract are met, Occidental agrees to provide all benefits which become payable under the plan with respect to those participants who are listed in the schedule of **[654]** participants attached to the contract as Exhibit B. Except as specified in this Section 3.7, Occidental shall not be responsible for the sufficiency of the deposit fund to provide the benefits specified in the plan. Occidental shall have no liability except as provided in the contract."

In his copy of the first sentence of this draft Mr. Rosenblum inserted after the word "met" the language: "anything to the contrary herein notwithstanding including 6.3 or otherwise."

After the word "provide" he wrote in "and guarantee".

These proposed insertions were communicated to Occidental. The wording of Section 3.7 in the next draft was identical to that in the final contract.

With regard to "pooling" Mr. Rosenblum would testify that he did not suggest "pooling" to anyone. He does not recall the word ever being used in conjunction with this plan or contract but cannot testify that it was never mentioned.

Mr. Craig: We would so stipulate to that, Your Honor.

Mr. Fehlig: We would stipulate that that is what the witness would testify if called to do so.

* * * * *

June 2 Stipulation for waiver of trial by jury—Fld.

Aug. 4 Occidental's request for Plff's to produce documents, and Occidental's interrogs to Plffs.—Fld.

Aug. 5 Occidental's request for Defts other than Occidental to produce documents—Fld.

Aug. 8 Motion for leave to amend complaint—Fld by Plff in Cons. cases 76-162C(3) and 76-201C(3).

Aug. 15 Motion fld 8/8/77 submitted.

Aug. 17 Order (HKW,J)—Fld. in Consolidated Cases 76-201C(3) and 76-172C(3). Plaintiff's Motion to file an amended petition granted. Copy of Order sent attorneys.

Aug. 29 Occidental's answer to amended petition—Fld.

Sept. 6 Plff's answers to Deft Occidental's interrogatories—Fld.

Sept. 6 Answer to Occidental's request to produce documents—Fld by Plffs.

Sept. 8 Document to Plffs' Answer to Occidental's request to produce documents, and additional submissions of Plffs in compliance with order of court relating to trial—Fld.

Sept. 15 Additional submissions of Plffs—Fld. in consolidated cases.

In compliance with order of ct.

Relating to trial.

Sept. 26 Supplemental submissions of Defts other than Occidental in compliance with order of court relating to trial—Fld by defts. other than Occidental Life Ins. Co. of Calif.

Sept. 26 Proposed findings of fact and conclusions of law submitted by Defts other than Occidental Insurance Co. in compliance with order of ct. relating to trial.

Sept. 30 Proposed findings of fact and conclusions of law submitted by Occidental Life Ins. Co. of Calif.—Fld.

Sept. 30 Supplemental submissions of Deft. Occidental in compliance with order of ct. relating to trial—Fld.

Oct. 3 Supplemental submissions of Defendant Occidental in compliance with order of court relating to trial—Fld.

Oct. 5 Supplemental submissions of Plffs pursuant to order of ct. relating to trial—Fld. by Plffs.

Oct. 11 Parties appearing by their respective counsel announce ready for trial. Introduction of evidence in chief on behalf of plff on trial of cause commenced but not concluded. Further proceedings postponed until tomorrow at 10:00 a.m.

Oct. 11 Parties appeared announced ready. Cause passed to 2 p.m.

Oct. 12 Again come parties on trial. Introduction of evidence in chief on behalf of plff on trial resumed but not concluded.
Further proceedings on trial postponed until tomorrow at 10 a.m.

Oct. 13 Again come parties on trial. Introduction of evidence in chief on behalf of plffs on trial resumed and concluded. Oral motions of defendants for directed verdict in deft's favor at close of plffs' case in chief made and submitted and overruled. Defts. may file written motions at a later time. Introduction of evidence on behalf of deft. Occidental commenced but not concluded. Further proceedings postponed until tomorrow at 10 a.m.

Oct. 4 Again come parties on trial. Introduction of evidence on behalf of deft. Occidental resumed and concluded. Further proceedings postponed until Monday at 2 p.m.

Oct. 17 Again come parties on trial. Introduction of evidence on behalf of defendant other than Occidental is commenced but not concluded. Further proceedings on trial postponed until tomorrow at 10 a.m.

Oct. 18 Again come parties on trial. Introduction of evidence on behalf of defendants other than Occidental resumed and concluded. Introduction of evidence in rebuttal on behalf of plaintiff commenced and concluded. Introduction of evidence in surrebuttal on behalf of defendants other than Occidental is commenced and concluded. Defendant Occidental may withdraw IRS files subject to use of all parties.

After transcript filed, Plaintiff has 30 days to file proposed findings of fact and conclusions of law. Defendant has 30 days after Plaintiff files proposed findings to file the same, thereafter Plaintiff may request time for reply if desired.

Oct. 25 Plff's objections to additional exhibits of defendants other than Occidental—Fld.

Oct. 25 Designations of excerpts from exhibits—Fld. by Plaintiffs.

Oct. 31 Stipulation—Fld by attys in consolidated cases 76-172C and 76-201C.

Nov. 1 Written objections of Defts other than Occidental to Plffs' exhibits—Fld. in Case 76-172C(2).

1978

Jan. 5 Three volumes of transcript of trial—Fld by Ct. Rptr.

... dition of adding the additional features of the plan which the Trustees desired, Occidental gave no credit for the amount by which its liability on the guarantee would have been reduced. Amendment 2, if it had gone into effect, would have substantially reduced Occidental's liability on its guarantee. Occidental withheld this information from the Trustees. The IRS then found that Amendment 2 would have constituted a "partial termination" of the plan, which would have disqualified it, because the actuarial value of the "improvements" was substantially less than the value of the cash benefits lost.

18. Amendment 4 reduced Occidental's liability to exhibit B participants by over Eight Hundred Thousand Dollars (\$800,000), which fact Occidental did not tell the Trustees. In failing to disclose to the Trustees that Amendment 4 would reduce its own liability by over Eight Hundred Thousand Dollars (\$800,000), Occidental failed to use that degree of skill and learning ordinarily used under the same or similar circumstances by actuaries. The submission to the Trustees of valuation summaries, which Occidental claimed showed the amount of reduction necessary to both fund the "improvements" in Amendment 4 and make plan B actuarilly sound, without informing the Trustees that the amendment would reduce Occidental's liability by over Eight Hundred Thousand Dollars (\$800,000), constituted a material misrepresentation. Occidental knew the representation to be false, and intended for the Trustees to act upon it. The Trustees were ignorant of the truth, and relied upon the misrepresentation to the injury of the beneficiaries.

19. In reducing its payments to Gibbons and Saffo, and stopping payments to Kavner, Occidental committed breaches of contract. In permitting the Trustees to change plaintiffs' payment Local 688 committed breaches of contract. In directing Occidental to change payments to plaintiffs the Trustees acted in violation of the plan and the trust agreement.

Now, unless this other document that you offered in [351] any way changes or can change the legal rights of the parties, it will not be included in the evidence.

Q. (By Mr. Fehlig) Now, did you meet the representatives of the LHI-688 pension trust in connection with the contract that was eventually entered into, which is the Plaintiffs' Exhibit 2 in this case, the LHI-688 group annuity contract? A. Yes, I did.

Q. And on how many occasions did you confer with the representatives of LHI-688? A. Several times.

Q. Can you tell me who was present and who you dealt with at the meetings in which this plan was formulated? A. Most of the time Tony Remshardt, Betty Tuck, Alex Selwood and Richard Kavner.

The Court: Now, let me see Mr.—pardon me. Mr. Craig, bring me RRR now. Go ahead.

And I want the identity and relationship, the names of these parties he just talked about so I'll know for sure—who's Betty Tuck for instance?

Q. I think we should have those questions answered, Your Honor.

Can you tell me who each of these individuals is?

A. Yes, Tony Remshardt was the broker on the contract with Occidental and was president I believe of Labor Management [352] Consultants, Inc.

Q. Where are they located or were they located? A. In St. Louis.

Q. Where at that time? A. In the Teamster complex where 688 is located.

Q. All right, go ahead. A. Betty Tuck was an employee of that firm.

Q. Of Labor Management? A. Consultants, Inc. I believe that's the correct name. And Alex Selwood was an actuary.

Q. For whom? A. Well, I'm not really positive. It was either Labor Management Consultants, Inc. or Local 688. I think it was Labor Management Consultants.

Q. Was he ever employed by Occidental? A. No.

Q. And who else did you mention? A. Richard Kavner.

Q. He was a Trustee of the LHI-688 pension trust at that time? A. Yes.

Q. And is a plaintiff in this lawsuit? A. Yes.

Q. Now, after your initial meeting with the LHI-688 people and Mr. Remshardt and his organization did you return [353] to California to obtain some actuarial figures? A. Yes, I obtained the employee data of Local 688 and LHI and obtained the existing plans and submitted them to our home office by mail for an actuarial cost calculation and a proposal offering regarding a contract.

The Court: Now, when in relation to your discussions with the people from Labor Management Consultants, Inc., did you receive any contact from an attorney named Stanley Rosenblum?

The Witness: Stanley was involved in a couple of the meetings; not the original two or three meetings, but he was involved later on when we got into the thing in more detail. But I don't remember him being there at the original meeting or the second meeting.

The Court: Go ahead.

Q. (By Mr. Fehlig) That original meeting would have been approximately when? A. Early 1970 I believe. It might have been late '69, but I think January of—

Q. At the next meeting did you have some figures as to what the proposed pension program would produce? A. Yes, the

pension benefits that our actuaries came up with was almost identical to the benefits being provided under the present plan.

Q. And what was the response, if any, of LHI-688 [354] people and their representatives at that time? A. Well, the response was something like well, God, we might as well stay where we are, you are not improving our situation any.

Q. What further negotiations occurred after that? A. At that point a suggestion was made to pool the two plans.

Q. Whose suggestions was that? A. I cannot remember who made that suggestion.

Q. Was it your suggestion? A. It was definitely not my suggestion.

Q. Was this made at a meeting? A. Yes.

The Court: Now, let's have the time, exact time as best you can recall, when the, quote, suggestion to pool was made.

The Witness: If I could have my file—

The Court: You may.

The Witness: I can't be certain of the exact date but I would pretty well guess that it occurred somewhere around the middle of May of 1970.

Mr. Craig: I beg your pardon? What?

The Court: Middle of May of 1970? That's when he first heard about the pool.

Q. (By Mr. Fehlig) Do you recall who was present at [355] that meeting? A. Not precisely, no.

Q. All right, can you recall whether anyone from Occidental other than yourself was at that meeting? A. No, there was not anyone other than myself as I recall.

Q. You recall how many people were at the meeting? You weren't meeting with just one other person? A. No, normally

we met in Tony Remshardt's office regarding these negotiations and the individuals that were there, sometimes all and sometimes partially all, were Alex Selwood, Betty Tuck, Tony Remshardt and Richard Kavner, but I cannot remember at that meeting just exactly which number or who was—

Q. All or some of those people, you don't recall? A. That's right.

Q. But you were the only representative from Occidental at that meeting? A. That's correct.

Q. Was it your proposal that the funds be pooled. A. No, it was not.

Q. And was the plan then reworked in order to produce higher pension levels? A. Yes, and I also remember at that time that we were given additional contribution levels to quote on that, went [356] up to the \$40 per week level that is in the current contract.

The Court: Let me interrupt here just a minute. You've stated that the first you ever heard of the pool was some time in May of '70. Have you had occasion to see this document which is included in other than Defendant Occidental Exhibit RRR that's previously been mentioned in evidence as a letter from Mr. Rosenblum dated January the 17th to Mr. Kavner, who was on the Board of Trustees at that time I understand?

But here's a document from the Internal Revenue Service dated January the 16th 1970, and it says: "St. Louis Health Institute Plan A, 300 South Grand, St. Louis, Missouri. In re: Name of plan, type of plan executed and amended."

It says: "The LHI-688 employees retirement and pension plan, pension August 27th was executed, '68; amended December the 17th 1969."

Was the document made available to you at the time of your discussions with Mr. Rosenblum, Mr. Remshardt or Betty Tuck or Mr. Selwood or whatever his name was?

The Witness: I don't remember seeing it.

The Court: Well, you knew at the time that whatever plan you worked out had to meet the IRS approval, didn't you?

The Witness: Yes, sir; yes, sir.

The Court: All right, go ahead.

Q. (By Mr. Fehlig) At any of these meetings did you [357] give a proffer any legal advice to the trustees or their representatives or anyone at the meetings with regard to the pooling question? A. No, sir.

Q. Now, when this was originally costed by Occidental you testify it was costed on a separate basis, LHI and 688? A. Yes.

Q. Was there a written proposal offered on that basis? A. Yes.

Q. Then later on I think you indicated that negotiations continued, and as I recall your answer to my last question, it was that they increased their contributions from what they had been to a higher level? A. They asked for cost based on increased contributions to a higher level.

Q. And did you—A. I mean, they asked for benefits based on increased contributions.

Q. Do you recall approximately what the increase was? A. It went up to a \$40 per week contribution.

Q. A \$40 per week contribution, all right. What else did they want in the plan? A. They—in the plan?

Q. In the contract or in the program. Let's refer to both of them as a pension program, if that's a fair way to [358] explain it.

A. Yes, they wanted a contract with a guarantee.

Q. And with whom did you discuss the guarantee provision? A. With Bob McCarty and with Stanley Rosenblum on occa-

sion and with Richard Kavner, Tony Remshardt, Selwood, Betty Tuck.

Q. Did you have anything to do with the drafting of the language in the guarantee? A. No.

Q. Do you know who did? A. Yes, Bob McCarty and Stanley Rosenblum.

Q. And was the plan eventually prepared on a pool basis? A. Yes it was.

Q. Approximately when was that done? A. I would have to refer to my files, I don't know.

Q. Well, was it in 1970 or 1971? A. I don't even remember that.

Q. But a contract eventually was prepared and signed, is that correct? A. That's correct.

Q. And that contract was based on a pooling of LHI and 688 funds, is that correct? A. Yes.

Q. And was this contract furnished to the Trustees or [359] their counsel for inclusion in their Internal Revenue filing? A. Yes. First of all, it was presented to their attorneys for review. A draft of both the plan and the contract were presented to the attorneys for review and then when they were both finalized after receiving the attorneys' comments they were put together and sent to them for submission to Internal Revenue.

Q. Were you ever led to believe by anybody that the pooling of these funds was in any way illegal?

Mr. Craig: Objection, Your Honor. That calls for hearsay at least.

Mr. Fehlig: I'll withdraw it.

The Court: There's a lot of things that are illegal. Some of them are mala prohibitum and some of them are mala in se. If you want to divide it up into that area, I'll listen.

Q. Let me direct your attention to the years 1970 and 1971. At that time did you have any contact, either directly or over the telephone, with anyone connected with the trustees of the Local 688-LHI pension fund in St. Louis? A. Yes.

Q. And can you tell me on what occasion or occasions you had contact with people in that connection? A. On the first occasion it was either late in 1970 or early in 1971, a telephone conversation, conference call, Mr. McCarty and myself had with the attorneys for the trustees.

Q. And who was that at the time? A. I believe it was Stanley Rosenblum.

[181] Q. What was the substance of that telephone conversation, Mr. Simmons? A. Substance was that we were discussing the filing of the LHI-688 plan with the Internal Revenue Service for a determination letter.

Q. Was there any discussion as to the nature of the funding or the application of contributions from LHI and 688 in connection with the fund? A. Yes.

Q. With the pension plan? A. Yes, we discussed filing, the filing, and it was determined that it was going to be filed on the basis of—

Mr. Kimbrell: May I object to this unless we have an identification of the speakers, when he says it was determined?

Q. Yes, I agree with that. Could you be more specific as to who stated that there would be a filing on a certain basis? A. Mr. Rosenblum stated that he would handle the filing and that it would be filed on a pooled basis.

Q. Did anyone, either you or Mr. Rosenblum, have any reservations about handling it on that basis? A. I had reservations, and so stated.

Q. And what were those reservations? A. That it was highly unusual for a plan of this type [182] which had no types of

benefits with two different companies to be filed on a pooled basis.

Q. Did you later learn that the LHI-688 plan had been approved by the Internal Revenue Service? A. Yes.

Q. Now, thereafter, did you have any contact with the trustees of the LHI-688 plan? A. Yes, I attended a number of meetings in St. Louis with the trustees.

Q. During the years 197—well, let me ask you, first of all, when was it you said you left Occidental? A. The end of June 1974.

Q. During the period of time from 1971 through 1974 did you make actuarial reports on an annual basis for the LHI-688 fund? A. Yes.

Q. And how did you handle that with respect to contributions? A. It was handled on a pooled basis.

Q. Did you report a single fund or did you divide it into two funds? A. It was a single fund.

Q. And did you at any time receive any information or request from the trustees or anyone acting on their behalf with regard to amendments to the plan? [183] A. Yes.

Q. When did you first—well, let me be more specific about it. There was an amendment number 1, wasn't there, which raised the LHI contributions? Do you recall that? A. Yes, there was.

Q. That was shortly after the plan's inception, is that correct? A. Yes.

Q. Then there was an amendment number 2. Do you recall that amendment? A. Yes.

Q. All right, were you involved in any discussion of that amendment before it was acted upon by the trustees? A. I attended a meeting with the trustees—I believe it was in 1973.

Cross-Examination

By Mr. Kimbrell:

Q. Mr. Simmons, I would like to show you Plaintiff's Exhibit 22 and ask you, is this an internal memorandum from you with regard to the amendment 2? A. Yes.

Q. And then did Occidental draft amendment number 2? A. At the request of the attorney for the trustees, yes.

Q. I would like to show you Plaintiffs' 23, a letter from yourself to Mr. Stanley Rosenblum. That also refers to Occidental's drafting the amendment, does it not? A. It does.

Q. All right, thank you, sir. [194] A. Also mentions changes that he may wish to make to it.

Q. Mr. Simmons, you have mentioned a 'phone call, conference call, involving Mr. Stanley Rosenblum, and I didn't get who else was in on that call. A. Mr. Robert McCarty.

Q. Now, was this your first participation in any negotiations leading up to the signing of the contract where you have talked to anyone representing the trustees? A. This was not—I do not believe this had anything to do with the signing of the contract, it was in connection with the plan. I was never involved in any negotiations on the contract.

Q. Do you have any idea when this 'phone call took place? A. It was late 1970, early 1971.

Q. Were you aware that there were at least drafts of the contract at that time? A. I was aware that there were—there had been drafts.

Q. Were you aware that the contract was going to be submitted along with the plan? A. Submitted to whom?

Q. To the IRS, that that document was going to be submitted also? A. It would have to be.

Q. Now, had you participated in any other discussions [195]

with anybody representing the trustees about the plan before this 'phone call? A. No.

Q. Had you been called upon to perform any actuarial calculations with regard to the plan or the contract before this 'phone call? A. Yes.

Q. And had those calculations been made upon a pooled basis or a segregated basis? A. A pooled basis.

Q. At whose direction did you make those calculations? A. Mr. McGinn.

Q. Did you furnish those calculations either to Mr. Rosenblum or to the trustees? A. Not directly. They would have to go to Mr. McGinn, who I—

Q. Do you have personal knowledge as to whether Mr. McGinn furnished them to Mr. Rosenblum or the trustees as something that you saw happen? A. No.

Q. Do you have any personal knowledge as to whether the IRS ever saw your calculations? A. No.

Q. Do you know whether anything in writing was ever prepared prior to submission to the IRS at or about the time [196] of this 'phone call or before it, stating that the plan was actuarially sound? I'm not— A. I don't recall.

Q. There were certain indications after the contract was signed, after IRS approval was obtained, that the plan was actuarially sound, correct? A. That is correct.

Q. You furnished those? A. I did.

Q. And the data that you furnished with those was on a pooled basis, is that correct? A. That is correct.

Q. And in this conversation is it your testimony that it was Mr. Rosenblum who used the term "pooling"? A. I believe everybody used—discussed the word "pooling", but I think it was instigated by Mr. Rosenblum.

Q. When you say everyone discussed the term, did someone explain the term to Mr. Rosenblum from an actuarial standpoint, what the meaning of it was? A. Since Mr. Rosenblum first raised the term "pooling" I assumed that he knew what pooling meant.

Q. When you say that you had reservations about filing it on a pooled basis, was this—were you saying that you did not feel this would be legal to do so?

Mr. Fehlig: I'm going to object to asking an [197] actuary for a legal opinion, Your Honor. I think that's out of the realm of his qualifications.

The Court: Be sustained.

Q. When you said that you had reservations about doing this, what were your reservations, what was the— A. Strictly in an actuarial point of view, that it was very unusual.

Q. When you attended the meeting in 1973 you say that you—and I'm not sure, I don't want to put words in your mouth as to what meeting we're talking about. Are we talking about a meeting in July 1973? A. I believe so.

Q. And did I understand you to say that you told the trustees that Erisa would become law and would require vesting? A. No, it was discussed at that meeting and there was a general discussion as to the impact of that law in which I seem to recall everybody participating in the discussion and possible effects.

Q. Were there any statements made as to what the provisions of Erisa were going to be? A. No.

Q. Did you give any advice to the trustees as to whether or not Erisa was going to require vesting, and if so, whether it was going to require any specific type? A. I don't recall that I did.

[198] Q. Did you have anything to do with the drafting of the plan itself? A. No.

Q. Were you aware anyone from Occidental drafted the plan? Now, by drafting the plan, there were originally two

Y-1

4573	Application For Determination																										
Individually Designed Plan (Under sections 401(a), 409(a) and 501(b) of the Internal Revenue Code)																											
<p>Note: Do not use this form for a plan established under a master or prototype program or a plan covering self-employed individuals. The term "trust" as used on this form includes a funded account.</p> <p>1. Determination requested for: a. Initial qualification—Date plan adopted <input checked="" type="checkbox"/> Amendment—Date adopted 06-1-1970</p> <p>2. Name and address (including ZIP code) of employer: Teamsters Local 688 300 South Grand Blvd. St. Louis, Mo. 63103</p> <p>3. Nature of business <input checked="" type="checkbox"/> UNION <input type="checkbox"/> Other (Specify) N/A</p> <p>4. Employer identification no. 43-0140435</p> <p>5. Date incorporated (or business commenced if not incorporated) 3-1-59</p> <p>6. Month accounting period ends December</p> <p>7. Predecessor name <input type="checkbox"/> N/A <input type="checkbox"/> Date of transfer N/A</p> <p>8. Type of entity <input checked="" type="checkbox"/> Sole <input type="checkbox"/> Corporation <input type="checkbox"/> Proprietor <input type="checkbox"/> Partnership <input checked="" type="checkbox"/> Association <input type="checkbox"/> Governmental <input type="checkbox"/> Other (Specify) N/A</p> <p>9. Name of plan Teamsters Local 688 Employees' Pension Plan (Plan "B")</p> <p>10. (a) Name of trust The LHI-688 Employees' Retirement and Pension Plan Trust (b) Name and address (including ZIP code) of trustee Richard Kavner, John Naber & Phil Goodwilling, 300 South Grand Blvd., St. Louis, Missouri 63103</p> <p>11. Employer identification number of trust 43-6099474</p> <p>12. Date trust executed Aug. 27, 1968</p> <p>13. Month accounting period of trust ends December</p> <p>14. Effective date of plan or present amendment Jan. 1, 1968</p> <p>15. Date communicated to employees Nov. 1, 1970</p> <p>16. How communicated <input checked="" type="checkbox"/> employer letter <input type="checkbox"/> Other (Specify) N/A</p> <p>17. Funding medium <input checked="" type="checkbox"/> Custodial <input type="checkbox"/> Group annuity <input type="checkbox"/> Individual <input type="checkbox"/> Other (Specify) N/A</p> <p>18. If pension or annuity plan, indicate type of plan <input type="checkbox"/> Unit <input type="checkbox"/> Fixed <input type="checkbox"/> Flat <input type="checkbox"/> Money <input type="checkbox"/> Other <input type="checkbox"/> benefit <input checked="" type="checkbox"/> benefit <input type="checkbox"/> benefit <input type="checkbox"/> purchase <input type="checkbox"/> Other (Specify) N/A</p> <p>19. Integration features <input type="checkbox"/> None If applicable— (a) Integrated with <input type="checkbox"/> OAS <input type="checkbox"/> Railroad Retirement <input type="checkbox"/> Other (Specify) N/A (b) Type <input type="checkbox"/> Excess <input type="checkbox"/> Offset <input type="checkbox"/> Step rate N/A</p> <p>Please furnish a brief description of the following provisions (on the basis of the most recent plan amendments, if any) and indicate the article or section where such provisions are contained. (Attach additional sheets if needed)</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;">Item</th> <th style="width: 60%;">Description</th> <th style="width: 25%;">Article or Section</th> </tr> </thead> <tbody> <tr> <td>20. Eligibility Requirements</td> <td colspan="2"> <input checked="" type="checkbox"/> None <input type="checkbox"/> One <input type="checkbox"/> Two <input type="checkbox"/> Three <input type="checkbox"/> Four <input type="checkbox"/> Five <input type="checkbox"/> Other (Specify) N/A </td> </tr> <tr> <td>21. Length of service (years)</td> <td colspan="2"> <input checked="" type="checkbox"/> None <input type="checkbox"/> Maximum N/A </td> </tr> <tr> <td>22. Age</td> <td colspan="2"> <input checked="" type="checkbox"/> None <input type="checkbox"/> Salaried <input type="checkbox"/> Hourly <input type="checkbox"/> Other (Specify) N/A </td> </tr> <tr> <td>23. Job class</td> <td colspan="2"> <input checked="" type="checkbox"/> None <input type="checkbox"/> Salaried <input type="checkbox"/> Hourly <input type="checkbox"/> Other (Specify) N/A </td> </tr> <tr> <td>24. Other</td> <td colspan="2"> 35 hrs. per wk. and 20 yrs. per yr. of regularly scheduled work N/A </td> </tr> <tr> <td>25. 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Eligibility Requirements	<input checked="" type="checkbox"/> None <input type="checkbox"/> One <input type="checkbox"/> Two <input type="checkbox"/> Three <input type="checkbox"/> Four <input type="checkbox"/> Five <input type="checkbox"/> Other (Specify) N/A		21. Length of service (years)	<input checked="" type="checkbox"/> None <input type="checkbox"/> Maximum N/A		22. Age	<input checked="" type="checkbox"/> None <input type="checkbox"/> Salaried <input type="checkbox"/> Hourly <input type="checkbox"/> Other (Specify) N/A		23. Job class	<input checked="" type="checkbox"/> None <input type="checkbox"/> Salaried <input type="checkbox"/> Hourly <input type="checkbox"/> Other (Specify) N/A		24. Other	35 hrs. per wk. and 20 yrs. per yr. of regularly scheduled work N/A		25. 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OCCIDENTAL EXHIBIT BB

APPLICATION FOR DETERMINATION

Individually Designed Plan

(Under sections 401(a), 405(a) and 501(a) of the Internal Revenue Code)

NOTE: Do not use this form for a plan established under a master or prototype program or a plan covering self-employed individuals. The term "plan" as used on this form includes a custodial account.

Name of plan Amended 1970 Department of the Treasury Internal Revenue Service		Amendment—Date plan adopted <u>7/10/73</u>		
3. Name and address (including ZIP code) of employer Teamsters Local No. 688 300 South Grand Boulevard St. Louis, Missouri 63103		3. Nature of business Labor organization 43-029100	4. Employer identification No. <u>43-609474</u>	
5. (a) Date incorporated (or business commenced if not a corporation) <u>1949</u>		5. (b) Month accounting period ends <u>Decem</u>	6. (a) Type of business of predecessor <u>NONC</u> (b) Date of transfer <u>None</u>	
7. Type of entity <u>None</u> <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Proprietor <input type="checkbox"/> Partnership <input type="checkbox"/> Association <input type="checkbox"/> Governmental <input type="checkbox"/> Unincorporated labor org.		8. Type of plan <input checked="" type="checkbox"/> Pension <input type="checkbox"/> Annuity plan <input type="checkbox"/> Stock bonus <input type="checkbox"/> Profit-sharing plan <input type="checkbox"/> Bond purchase		
8. Name of plan Teamsters Local 688 Employees Pension Plan (Plan "B")		9. Employer identification number of trust <u>43-609474</u>		
10. (a) Name of trust <u>LMI-688 Employees Retirement and Pension Plan Trust</u> (b) Name and address (including ZIP code) of trustee Trustees of LMI-688 Employees Retirement and Pension Plan Trust <u>300 South Grand Blvd. St. Louis, MO 63103</u>		11. Date trust executed <u>August 27, 1960</u>		
12. Effective date of plan or present amendment <u>1/1/74</u>		13. Month accounting period of trust ends <u>December 31</u>		
14. Funds of medium <u>Custodial</u> Group annuity <u>Individual</u> Other (Specify) <u>None</u>		15. Date communicated to employee <u>Will notify each employee</u> How communicated <u>in writing when IRS issues Determination</u>		
16. Trust (Bank) <input type="checkbox"/> Trust (Diner) <input type="checkbox"/> Account <input checked="" type="checkbox"/> Contract <input type="checkbox"/> Contracts		17. If pension or annuity plan, indicate type of plan U... <input type="checkbox"/> Fund <input type="checkbox"/> Plan <input type="checkbox"/> Money <input type="checkbox"/> Other <input checked="" type="checkbox"/> Benefit <input type="checkbox"/> Benefit <input type="checkbox"/> Benefit <input type="checkbox"/> Purchase <input type="checkbox"/> Other (Specify)		
18. Integration features <u>None</u> If applicable—(a) Integrated with <input type="checkbox"/> OASI <input type="checkbox"/> Railroad Retirement <input type="checkbox"/> Other (Specify) (b) Type <input type="checkbox"/> Excess <input type="checkbox"/> Offset <input type="checkbox"/> Step rate				
Please furnish a brief description of the following provisions (on the basis of the most recent plan amendments, if any) and indicate the article or section where such provisions are contained. (Attach additional sheets if needed.)				
Item	Description			Article or Section
19. Eligibility Requirements				
(a) Length of service (years)	<input checked="" type="checkbox"/> None <input type="checkbox"/> One <input type="checkbox"/> Two <input type="checkbox"/> Three <input type="checkbox"/> Four <input type="checkbox"/> Five <input type="checkbox"/> Other (Specify) _____	Sec. 2.1		
(b) Age	<input checked="" type="checkbox"/> None <input type="checkbox"/> Minimum _____ <input type="checkbox"/> Maximum _____	Sec. 2.1		
(c) Job class	<input type="checkbox"/> None <input type="checkbox"/> Salaried <input type="checkbox"/> Hourly <input checked="" type="checkbox"/> Other (Specify) All but those covered by another pension plan pursuant to collective bargaining and seasonal and temporary employees	Sec. 1.7 and Sec. 1.8		
(d) Other				
20. Employer Contribution Formula	<input checked="" type="checkbox"/> All <input type="checkbox"/> Balance necessary <input type="checkbox"/> Other (Specify)	Ex. C of Group Annuity Contr. w/ Occidental		
21. Allocation Formula n/a	<input type="checkbox"/> In proportion to compensation <input type="checkbox"/> Other (Specify)			

Under penalties of perjury, I declare that I have examined this application, including accompanying statements, and to the best of my knowledge and belief it is true, correct, and complete.

<u>S. J. G.</u>	<u>6/2/73</u>	<u>Revised</u>	<u>Initials</u>	<u>Initials</u>
Revised		Initials	Initials	Initials

PLAINTIFFS' 10

Letter of November 1, 1970, to Teamsters Local 688 employees transmitting to each employee a copy of the Plan.

"TO OUR EMPLOYEES:

"We are pleased to announce that the pension plan covering you has been amended by the Board of Trustees to provide more liberal benefits for you and, in addition, to provide that Occidental Life Insurance Company of California will fund the increased benefits. This amendment was approved by the Board of Trustees on October 19, 1970, and will be submitted to the Internal Revenue Service in the near future. If it is approved by the Internal Revenue Service, then it will be effective as of January 1, 1968 and if it is not approved, then the Plan you are presently covered under will remain effective.

"The terms of the amendment to your Plan are contained in a copy of said amendment which is attached to this letter. If you have any questions pertaining of the Plan, the Board of Trustees will be available during working hours to answer your questions. At such time as the Internal Revenue Service approves the attached Plan, we will publish a brochure describing the benefits to you.

"TEAMSTERS LOCAL 688"

PLAINTIFFS' 11

Letter from Richard J. Eskoff, Pension Consultant, Occidental, to Betty Tuck, LMCI, May 15, 1970.

"Our actuaries have stated that a benefit of \$40.00 per month for each year of service up to a minimum of 30 years can be provided by the following contributions:

“Effective January 1, 1970—\$22.00 per week
“Effective January 1, 1971—\$28.00 per week
“Effective January 1, 1972—\$34.00 per week
“Effective January 1, 1973—\$40.00 per week
“. . .

“Annuities will be purchased at date of retirement and fully guaranteed at that point.”

PLAINTIFFS' 12

Letter from Eskoff to Tony Remshardt, LMCI, June 1, 1970.

“. . . I am attaching, . . . the actuarial valuation basis for this Contract to be used for Internal Revenue Service filing.”

PLAINTIFFS' 13

Letter from Grant M. Hudson, Jr., Director of Group Pension Sales, Occidental, to Tony Remshardt, July 2, 1970.

“. . . In developing this revision of the plan as it will apply to Local No. 688 and the L.H.I. participants, we have created a single plan document as opposed to two separate plans of your preliminary arrangement. This has been done for purposes of simplicity—since many of the provisions have a common denominator between the two groups—and to facilitate general administrative procedures. . . .”

“We have had our Law Department review the Trust Agreement as submitted. They have found this Trust to be satisfactory for our purposes, . . .”

PLAINTIFFS' 14

Letter from Richard J. Eskoff to Betty Tuck, September 8, 1970.

"Attached is the most recent data that I have received regarding Local 688 and will be the data upon which the proposed guarantees will be based."

PLAINTIFFS' 15

Letter from Robert W. McCarty, Second Vice President and Associate Actuary, to Stanley Rosenblum, September 23, 1970.

". . . This contract has been completely rewritten to provide the guarantees which were agreed to at our meeting in St. Louis earlier this month. The format of the contract is now similar to the current contract for the Teamsters Negotiated Pension Plan.

"Article 3.7 of this revised contract provides that Occidental will guarantee all benefits under the Plan for the employees scheduled in Exhibit B. . . . The lifetime guarantee of benefits provided by Article 3.7 is contingent upon Occidental receiving the contributions for all employees under the Plan for the next 20 years. . . .

"We have also performed an actuarial valuation to establish the level of benefits for L.H.I. employees which can be supported by the present rate of contributions of \$12.00 per week for full-time employees and \$6.00 per week for part-time employees. We have determined that the present benefit level for full-time L.H.I. employees of \$300 per month for 5 years reducing to \$110 per month for life thereafter may be increased to \$300 per month for 5 years reducing to \$200 per month for

life thereafter. The corresponding improved benefit for part-time employees is \$135 per month commencing at age 65 reducing to \$110 per month for life thereafter.”

PLAINTIFFS' 16

Letter from Robert W. McCarty to Stanley Rosenblum, February 4, 1971.

“. . . I am attaching a copy of the individuals we understand are to be added to Exhibit B of the contract. . . . [W]e have based our actuarial calculations on this data and our agreement to bring these people under the contract with a full lifetime guarantee is based on these calculations.”

PLAINTIFFS' 17

Letter from Maurice O. Simmons, Associate Actuary, Occidental, to Trustees, November 3, 1971.

“The Plan is actuarially sound at the present time. . . .”

PLAINTIFFS' 18

Letter from Maurice O. Simmons to Richard J. Eskoff, February 15, 1972.

If Amendment No. 1 is signed . . . then the revised contribution rate of \$16 per week in 1972, \$18 per week in 1973 and \$20 per week from 1974 for the L.H.I. Full-time employees will support a benefit of \$325 per month for these employees without affecting the funding status of the Plan.

2.1 Within 90 days of the acceptance of the Contract by the Contractholder, the Contractholder shall pay to Occidental as a Deposit under the Contract an amount equal to the value, as of the date payment is made to Occidental, of all funds then held by the Contractholder with respect to the Plan. Thereafter, during the first twenty-five Contract Years all contributions received by the Contractholder which are payable to the Plan Trustees with respect to the Plan shall be payable to Occidental as Deposits under the Contract within 90 days of their receipt. However, in no event shall the amount payable to Occidental under the Contract be any less than the sum of the contributions which are payable with respect to all Participants under the Plan in the Schedule of Participant Contributions attached to the Contract as Appendix C.

After the first twenty-five Contract Years, Deposits shall be payable to Occidental on such dates and in such amounts as may be agreed upon by Occidental and the Contractholder. All Deposits shall become a part of the Deposit Fund when received by Occidental.

* * * * *

2.3 Occidental will notify the Contractholder if the Deposit Fund is not sufficient to permit any withdrawal required by Section 3 with respect to any Participant who is not listed in the Schedule of Participants attached to the Contract as Exhibit B. The Contractholder will be required to make a Deposit sufficient to permit the withdrawal. The Deposit will be due on the date stated in the notice.

* * * * *

3.1 Occidental shall make withdrawals from the Deposit Fund to provide benefits under the Contract only as directed by the Contractholder.

* * * * *

3.3 If a Participant for whom an annuity is purchased under the Contract is entitled to an immediate retirement annuity under

Q. (By Mr. Kimbrell) Mr. Prange, have you also seen letters signed by Mr. Simmons in 1971 and 1972 stating that the plan was actuarially sound? A. Yes.

Q. And you saw calculations that went with those certifications and those calculations were based upon a combination of LHI contributions and 688 contributions and LHI and 688 payments, is that correct? A. Yes.

Q. Now, based upon the figures provided by Occidental have you done calculations as to the actuarial soundness of the plan based on those assumptions in those years? A. May I refer to—

The Court: Certainly.

Q. Certainly. [263] A. Based on the Occidental's responses to the Interrogatories that were addressed to them they presented them to Exhibit 3 and Exhibit 4 in which they broke the cost for the two groups apart, I used their actuarial calculations. I used the census data they provided to determine the approximate number of full time and part time employees with LHI and calculated a minimum—

Mr. Fehlig: Your Honor, at this point let me object because the witness has testified that the calculations he is basing his testimony on are on the basis of a separation of LHI and 688 funds, whereas the evidence I think heretofore has been that Occidental's calculations have all been on a pooled basis.

The Court: I haven't heard him use the word "separation" yet, counsel.

Mr. Fehlig: It was my impression that's what—

Mr. Kimbrell: No, these are combined.

Mr. Fehlig: I'm sorry, I withdraw the objection.

Q. (By Mr. Kimbrell) All right, you did make such calculations? A. Yes, I made such calculations, and for this purpose I assumed that actuarial soundness would mean that the annual

normal cost of the plan was paid each year and interest on the unfunded liability was paid and on the basis of the expected contributions and the liabilities as estimated by [264] Occidental, that test was not being met.

Q. In taking the guarantee, is this taking the guarantee in consideration or putting it aside? A. If this combined all people, it put the guarantee aside.

Q. Was it pooling in LHI and 688? A. Yes.

Q. In other words, you were assuming for these purposes, the fund's liability for all participants, LHI and Exhibit B 688 and non-Exhibit B 688? A. Yes.

Q. And if you make that assumption can you tell me your opinion as to whether the plan was actuarially sound, excluding the guarantee? A. It appeared to not be actuarially sound.

Q. In other words, to make a statement that the plan was actuarially sound you would have to include the guarantee in the terms that I have stated it as an ongoing guarantee? A. Yes.

Q. Now, Mr. Prange— A. Can I make—

Q. Certainly, sir. A. I'm not implying that that guarantee by itself would have made the plan sound.

Q. All right. Mr. Prange, would you tell me what [265] provisions of the contract you took into account in reaching your conclusions? And I'm asking for your interpretation of the sections, but what sections in your over-all evaluation did you look at?

Mr. Fehlig: Your Honor, if this testimony is based upon a legal interpretation of the contract I'm going to have to object to it and move that it be stricken, Your Honor.

The Court: Mr. Fehlig, you've already made a record clearly that the Court's accepting this testimony only on the basis of mathematical calculations. I'll decided the legal issues.

Go ahead.

United States District Court
Eastern District of Missouri
Eastern Division

CHARLES SAFFO, et al.,
Plaintiffs,

v.

OCCIDENTAL LIFE
INSURANCE COMPANY
of CALIFORNIA,
et al.,

Defendants.

No. 76-172 C (3)
Consolidated

**OCCIDENTAL'S ANSWER
TO
AMENDED PETITION**

COMES NOW defendant, Occidental Life Insurance Company of California, and, in answer to plaintiffs' Petition as amended, states:

With respect to the Petition of RICHARD KAVNER:

1. With respect to Count I, Paragraph 18(A), admits the existence of the Group Annuity Contract referred to, but denies that the language quoted constitutes a complete statement of the provisions of Section 7.23 of the Contract.
2. Denies the allegations in Paragraph 18(B).
3. With respect to the allegations in Paragraph 24(A) admits that Occidental furnished actuarial data regarding the pension plan both before and after June 17, 1974, and that some or all of this data may have been requested from the Trustees by the Internal Revenue Service.

4. With respect to Paragraph 24(B), admits that actuarial data furnished by Occidental included both the Labor Health Institute and Teamsters Local 688, but denies the balance of the allegations in said paragraph.

5. Denies the allegations in Paragraph 24(C).

COUNT V

1. Realleges by reference and incorporates its answers heretofore made to Paragraphs 1-2 and 10-29 of Count I of Richard Kavner's Petition.

2. Denies the allegations in Paragraph 2, 3 and 4 of Count V.

WHEREFORE, having fully answered Count V, defendant prays for judgment and for its costs.

COUNT VI

1. Realleges and by reference incorporates its answers heretofore made to Paragraphs 1-2 and 10-29 of Count I of Richard Kavner's Petition and Paragraph 3 of Count V of his Petition.

2. Denies the allegations in Paragraphs 2 and 3 of Count VI.

WHEREFORE, having fully answered Count VI, defendant prays for judgment and for its costs.

COUNT VII

1. Realleges and by reference incorporates its answers heretofore made to Paragraphs 1-2 and 10-29 of Count I of Richard Kavner's Petition and Paragraph 3 of Count V of his Petition.

2. Denies the allegations in Paragraphs 2 and 3 of Count VII.

WHEREFORE, having fully answered, defendant prays for judgment and for its costs.

With respect to the amendments to the Petition of HAROLD J. GIBBONS, defendant states:

With respect to Count III, Paragraph 1, realleges and by reference incorporates its answers heretofore made to Paragraphs 18(A), 18(B), 24(A), 24(B) and 24(C) of Richard Kavner's Amended Petition as incorporated in Harold J. Gibbons' Petition.

2. Incorporates its answers heretofore made to Counts VIII, IX and X of Harold J. Gibbons' Petition as alleged in Counts V, VI and VII and incorporated from Richard Kavner's Amended Petition.

WHEREFORE, having fully answered, defendant prays for judgment and its costs.

With respect to the amendments to CHARLES SAFFO'S Petition, Occidental states:

1. With respect to Count I, realleges and by reference incorporates its answers heretofore made to Paragraphs 18(A), 18(B), 24(A), 24(B) and 24(C) of his Petition as adopted from the corresponding amendments to Richard Kavner's Amended Petition.

2. Realleges and by reference incorporates its answers heretofore made to Counts III, IV and V of said Petition as incorporated from Counts V, VI and VII of Kavner's Petition.

FOR FURTHER ANSWER to plaintiffs' Petitions and the amendments thereto, defendant, Occidental, states:

First, the Petitions and amendments thereto fail to state a claim upon which relief can be granted.

Second, any administrative action or decision by the Internal Revenue Service with respect to the funding or any other aspect of the Labor Health Institute — Local 688 Pension Plan is a matter over which judicial review is and was unavailable to this defendant under 5 U.S.C. §701 et. seq. and to hold this defendant liable for damages with respect thereto would deprive it of property without due process of law in violation of Amendments V and XIV of the United States Constitution.

Third, the claims set forth in the amendments to plaintiffs' Petitions are barred by the Statute of Limitations.

Fourth, plaintiffs assumed the risk of having the pension plan or any aspect thereof disqualified by the Internal Revenue Service or by virtue of subsequent changes in the law or administrative regulations and policies or changed by the Trustees.

Fifth, plaintiffs' claims are barred by laches.

Sixth, plaintiffs have been paid under the terms of the Group Annuity Contract.

Seventh, plaintiffs' claims are *res adjudicata*.

WHEREFORE, having fully answered, defendant prays for judgment and its costs.

ZIERCHER, HOCKER, TZINBERG,
HUMAN & MICHENFELDER
/s/ By: Edward K. Fehlig
Occidental Life Insurance Company
of California
130 South Bemiston Avenue
Suite 405
Clayton, Missouri 63105
(314) 727-5822
Attorneys for Defendant

Copy of the foregoing mailed this 26th day of August, 1977, to Clyde E. Craig, Attorney for Other Defendants Other than Occidental, 7 N. 7th St., St. Louis, Mo., 63101, and to Alan G. Kimbrell, Attorney for Plaintiffs, 1015 Locust St., Suite 530, St. Louis, Mo., 63101, by depositing same in U.S. Postal Service, postage prepaid, Clayton, Mo.

/s/ Edward K. Fehlig

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